

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6547 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

=====

1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

RAMANBHAI R NAYAK

Versus

DIST EDUCATION OFFICER (PRIMARY)

Appearance:

MR NR TANDEL for Petitioner

NOTICE SERVED for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 09/12/1999

ORAL JUDGEMENT

1. Ramanbhai Ranchhodji Nayak claiming to be the legal heir of his deceased wife-Smt.Madhukantaben has filed this petition. In the petition the petitioner has stated that his wife Smt.Madhukantaben had joined services with the respondents somewhere on 27.7.1966 as an Assistant Teacher (Primary) and she had put in around 17 years of service and she ultimately died on 8.9.1983. In the petition the petitioner prayed that in view of services rendered by his wife the petitioner may be paid

Rs.18,124/- comprising of GPF, balance of link insurance scheme, medical allowance and other interests which have been highlighted by the petitioner in the petition. The petition has been filed somewhere in September, 1986 and this court has issued notice.

2. On behalf of respondent-Shri M.M.Vasava, District Primary Education Officer, District Panchayat, Valsad has filed affidavit-in-reply wherein it has been stated that the claim of the petitioner was examined and ultimately after verification following amounts were due and payable:

(a) difference of pay, interest payable thereon
in accordance with the Govt.resolution,
Finance Dept No.PCR 1275/87-M dated 22.5.1976
and 5th instalment of CDS amount and
interest thereon Rs.1667/-

(b) difference in the amount of link
insurance Rs.2889/-

3. It was further stated that the aforesaid amounts have been paid to the petitioner by cheque on 12.6.1998 which has been accepted by the petitioner without prejudice to his rights.

4. When the matter came up before this court today (9.12.1999) Mr.N.R.Tandel, learned advocate appearing for the petitioner stated that the petitioner claimed Rs.18,124/- and the respondent has admitted that the petitioner was only entitled to Rs.4,556/-. This petition raises disputed question of fact. In that view of the matter and in fact and circumstances of the case, it will be proper if this court remands the matter to the Commissioner of Primary Education who has power and jurisdiction to decide the dispute between the employee and the Government who may after hearing both parties decide the claim of the petitioner in view of long length of service rendered by his wife. Mr.Doshit has no objection if such an order of remand is passed. However, this court does not express any opinion on merits of the matter and request the Commissioner of Primary Education to decide the matter in accordance with law after hearing the parties. The petitioner is at liberty to raise all legal and factual contentions and the respondents may also contest the matter in accordance with law before the authorities. Matter is remanded to Commissioner of Primary Education without deciding the disputes raised in

this matter as this court can not decide it under Article 226 of the Constitution of India. Since the petitioner claims amount in view of long length of services his wife had put in and died in 1983 and the matter is of 1988, the authorities are requested to take up the matter on priority basis and dispose of as expeditiously as possible.

5. Rule is discharged subject to aforesaid observations. No order as to costs.

...